IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.31 OF 2005
IN
ARBITRATION PETITION NO.356 OF 2004

Competent Hotel Pvt.Ltd. .. Appellant.

V/s.

Airports Authority of India
and Others .. Respondents.

Mr.A.C. Sin gh i/b. D.R. Shah for the appellant.

Ms.Lopa Munim i/b. Rajesh Kothari for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 7TH JUNE, 2005.

P.C. :

1. Heard Mr.A.C. Singh, the learned counsel for the appellant.

2. Clause 2(B) of the Contract between the parties reads thus :

> "2(B) Beyond one year period of licence, the amount of quoted licence fee shall be escalated and compunded by 10% every year."

3. The Arbitral Tribunal in its award with reference to clause 2(B) concluded thus :

> "It is observed that M/s.Competent

> Hotels Pvt.Ltd. owner of Kumaria Residency was operating the restaurant on the mezzanine floor Terminal IIB, when the tenders were invited for operating the same restaurant. M/s.Competent Hotels Pvt.Ltd. were the highest bidders and they were invited for negotiations before granting the contract to operate this restaurant. Award letters dated 7th January, 1998 from AAI CHQ and letter dated 29th January, 1998 mentioned the specific operating terms of the contract. As per clause 2(B) of the award letter dated 29th January, 1998, the licence fee was to be escalated and compounded by 10% every year beyond one year period of licence. The claimant, through his letter dated 4th January, 1999 and subsequent reminders contested this clause and contended that the effective date of escalation should be 1st February, 1999.
>
> In the light of above discussion, I arrive at a conclusion that the applying 10% compound escalation in the licence fee from 01.02.99 instead of from November, 1998 as claimed by the claimant is not admissible."

4. In the petition for setting aside the award, it was contended before the learned Single Judge that the escalation was to commence only from February 1, 1999 as per the negotiations between the parties. The learned Single Judge negatived the contention by observing thus :

> Mr.Singh submitted that, infact, what is stated in the agreement is wrong and that pursuant to prior negotiations the escalation ought to commence only from 1.2.1999. This is contrary to the terms of the agreement itself. Moreover, the learned Arbitrators held that were unable to accept the Petitioner’s contentions for the reason that the Petitioner had failed to produce the necessary documents. Even assuming that the necessary documents supported the Petitioner’s case, it would make no

> difference, the petitioners having failed to have the same produced."

5. We find no illegality in the consideration of the matter by the learned Single Judge. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)